

AN ORDINANCE

BY: COMMUNITY DEVELOPMENT/HUMAN RESOURCE COMMITTEE

AN ORDINANCE TO AMEND SECTION 6-4028 AND TO CREATE SECTION 6-4028.1 OF THE LAND DEVELOPMENT CODE, PART III OF THE CODE OF ORDINANCES, SO AS TO CHANGE THE DEFERRAL FEE FOR VARIANCE AND SPECIAL EXCEPTION APPLICATIONS BEFORE THE BOARD OF ZONING ADJUSTMENT TO A FLAT FEE FOR EACH INSTANCE THAT THE BOARD GRANTS AN APPLICANT'S REQUEST FOR DEFERRAL TO A SUBSEQUENT PUBLIC HEARING ON THE APPLICATION; AND FOR OTHER PURPOSES.

WHEREAS, currently there is an application fee, based on the zoning district, required to be paid by an applicant seeking a variance or special exception from the City of Atlanta Board of Zoning Adjustment ("Board"); and

WHEREAS, the purpose of the fee is to cover the administrative costs associated with such application including the costs incurred to notice the public hearing, which notice includes mailings to property owners within 300 feet of the subject property, posting of sign(s) at the subject property, and publication in a newspaper of general circulation ("notices"); and

WHEREAS, in the event the Board grants one or more deferrals from the advertised public hearing to a future public hearing, the City incurs additional costs beyond that which may be covered in the application fee in causing any subsequent notices to be given of the public hearing date to which the Board has deferred the application ("re-notice"); and

WHEREAS, currently and pursuant to 09-O-0802 there is deferral fee imposed on a variance of special exception applicant to cover the actual costs incurred by the City in re-noticing the public hearing in accordance with the requirements of the Atlanta Zoning Ordinance; and

WHEREAS, the office of planning has worked with the Mayor's office to streamline the variance and special exception process which efforts have identified changing the deferral fee to a flat fee based on zoning district, similar to the application fee, so as to create more predictability for applicants and allow staff to the Board to more quickly process deferred cases; and

WHEREAS, the variance and special exception application and deferral fees should be set forth in a stand-alone section of the land development code as opposed to section 6-4028 dealing more specifically with appeals to the Board.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA ORDAINS AS FOLLOWS:

Section 1. That Section 6-4028 of the Land Development Code and which reads as follows:

6-4028. Appeals to the Board

Appeals to the board may be taken by any person aggrieved or by an officer, department, board, or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken, and with the board, a notice of appeal specifying the grounds thereof. The notice filed with the board shall be accompanied by a filing fee which shall be credited to the general revenue fund of the city. The amount of such fee shall be determined from the following schedule:

- (1) For appeals which allege that a decision of an administrative officer is in error, each appeal, without regard to the zoning district in which the subject property lies, shall be \$250.00.
- (2) Variance applications. Variance application fees are based on the zoning district in which the subject property is located.

District	Fee
R-1, R-2, R-2A, R-3, R-3A, R-4, R-4A, R-4B, R-5, LD (landmark district), HD (historic district)	\$100.00
MR, SECTORS, 1-8 RG, SECTORS, 1-6	500.00
R-LC, O-I, C-1, C-2, C-3, C-4, C-5, I-1, I-2 MRC-1, MRC-2, MRC-3, LW, NC, SPI	625.00

- (3) Special exception applications. Special exceptions application fees are based on the zoning district in which the subject property is located.

District	Fee
R-1, R-2, R-2A, R-3, R-3A, R-4, R-4A, R-4B, R-5, LD (landmark district), HD (historic district)	\$100.00
MR, SECTORS, 1-8 RG, SECTORS, 1-6	500.00
R-LC, O-I, C-1, C-2, C-3, C-4, C-5, I-1, I-2 MRC-1, MRC-2, MRC-3, LW, NC, SPI	625.00

- (4) Any applicant or appellant requesting a deferral, whether in writing prior to the hearing or in person at the hearing, of any advertised matter before the board and

for which the board grants the deferral of such matter to a later hearing date shall be required within three business days of the hearing at which the board grants the deferral the actual costs to be incurred by the bureau of planning in re-mailing and re-advertising the new hearing date(s) in accordance with the zoning ordinance.

- (5) Any person appealing from the decision of the board to the Superior Court shall pay the actual costs incurred by the city in causing the board's hearing(s) on the appeal to be transcribed as contemplated in the Zoning Ordinance. The board, through its secretary, shall communicate to the appellant the actual costs and the requirement and manner in which to pay same. The board shall not be required to file the transcript of the hearing(s) before it until such time as the appellant pays such costs.

The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown. The board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Is amended to read as follows:

6-4028. Appeals to the Board

Appeals to the board may be taken by any person aggrieved or by an officer, department, board, or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken, and with the board, a notice of appeal specifying the grounds thereof. The notice filed with the board shall be accompanied by a filing fee which shall be credited to the general revenue fund of the city. The amount of such fee shall be determined from the following schedule:

- (1) For appeals which allege that a decision of an administrative officer is in error, each appeal, without regard to the zoning district in which the subject property lies, shall be \$250.00.
- (2) Any appellant requesting a deferral, whether in writing prior to the hearing or in person at the hearing, of any advertised matter before the board and for which the board grants the deferral of such matter to a later hearing date shall be required within three business days of the hearing at which the board grants the deferral to pay the actual costs to be incurred by the bureau of planning in re-mailing and re-

advertising the new hearing date(s) in accordance with the zoning ordinance. The board, in its discretion, is authorized not to hear the appeal on the date to which the appeal was deferred in the event the deferral fee is not paid prior to sounding of the case.

- (3) Any person appealing from the decision of the board to the Superior Court shall pay the actual costs incurred by the city in causing the board's hearing(s) on the appeal to be transcribed as contemplated in the Zoning Ordinance. The board, through its secretary, shall communicate to the appellant the actual costs and the requirement and manner in which to pay same. The board shall not be required to file the transcript of the hearing(s) before it until such time as the appellant pays such costs. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown. The board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Section 2: That a new Section 6-4028.1 of the Land Development Code and entitled “variance and special exception fees” is created and which shall read as follows:

6-4028.1 Variance and Special Exception Fees

The secretary to the board shall charge as follows:

- (1) *Variances.* Variance application and deferral fees are based on the zoning district in which the subject property is located according to the following schedule:

District	Application Fee	Deferral Fee
R, LD, HD	\$100.00	\$65
RG, MR	500.00	\$170
R-LC, O-I, C, I, MR-C, LW, NC, SPI	625.00	\$ 200

- (2) Special exceptions. Special exceptions application and deferral fees are based on the zoning district in which the subject property is located according to the following schedule:

District	Application Fee	Deferral Fee
R, LD, HD	\$100.00	\$65
RG, MR	500.00	\$170
R-LC, O-I, C, I, MR-C, LW, NC, SPI	625.00	\$ 200

Any variance or special exception applicant requesting a deferral, whether in writing prior to the hearing or in person at the hearing, of any advertised matter before the board and for which the board grants the deferral of such matter to a later hearing date shall be required within three business days of the hearing at which the board grants the deferral to pay the deferral fee. The board, in its discretion, is authorized not to hear the appeal on the date to which the appeal was deferred in the event the deferral fee is not paid prior to sounding of the case..

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Community Development and Human Resources

Caption:

AN ORDINANCE

BY: COMMUNITY DEVELOPMENT/HUMAN RESOURCE COMMITTEE

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Council Meeting Date: March 21, 2011

Requesting Dept.: Planning and Community Development

FAC Confirmed by: N/A

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.

The purpose of this legislation is to amend the current variance deferral fee by creating a flat fee based on zoning districts. A flat fee creates more predictability for applicants and allows staff to more quickly process deferred variance cases.

2. Please provide background information regarding this legislation.

Example: The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.

This Office of Planning has worked with the Mayor's office through Atlanta Stat to streamline the variance process and deferral fee structure. The flat fee, as opposed to a fee for each specific application, is a result of this work.

3. If Applicable/Known:

(a) Contract Type (e.g. Professional Services, Construction Agreement, etc): NA

(b) Source Selection:

(c) Bids/Proposals Due:

(d) Invitations Issued:

(e) Number of Bids:

(f) Proposals Received:

(g) Bidders/Proponents:

(h) Term of Contract:

4. Fund Account Center (Ex. Name and number):

Fund: _____ Account: _____ Center: _____

5. Source of Funds: *Example: Local Assistance Grant*

6. Fiscal Impact: A tiered reduction in property taxes receipts from the property but only if property actually rehabbed.

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery: none

Examples:

a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.

b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.

This Legislative Request Form Was Prepared By: Brandy Crawford

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: CANDACE BYRD

Dept.'s Legislative Liaison: Garnett Brown

Contact Number: Ext. 6724

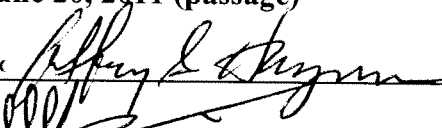
Originating Department: Planning and Community Development


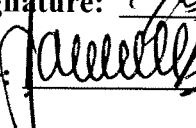
Committee(s) of Purview: Community Development / Human Resources

Chief of Staff Deadline: May 13, 2011

Anticipated Committee Meeting Date(s): June 14, 2011 (2nd read)

Anticipated Full Council Date: June 20, 2011 (passage)

Legislative Counsel's Signature: 

 Commissioner Signature: 

Chief Procurement Officer Signature: N/A

CAPTION

AN ORDINANCE

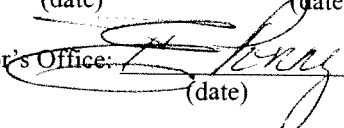
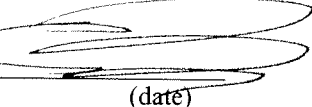
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FINANCIAL IMPACT (if any)

Mayor's Staff Only

Received by CPO: _____ (date) Received by LC from CPO: _____ (date)

Received by Mayor's Office:  (date) Reviewed by:  (date)

Submitted to Council: _____ (date)